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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969

NO. .....

STEPHEN J. OLAH,
Petitioner,

v.

GARVIS L. SAMS, et al,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

Stephen J. Olah petitions this Court for a writ of certiorari to review the judgment and opinion of the Supreme Court of Georgia entered in the case of *Sams et al v. Olah*, No. 25292, 225 Ga. ... (... S.E. 2d ...), the respondents above being the appellants below, and the petitioner being the appellee, rendered on the 15th day of September 1969, and motion for rehearing being denied on the 29th day of September, 1969. A stay of the remittitur was granted for 90 days from September 29, 1969, and until the petition to the Supreme Court of the United States is finally disposed of, the same reading as follows:

"Upon consideration of the foregoing application filed in this case, for a stay of the remittitur, the clerk of this court is hereby directed to withhold the transmittal of the remittitur to the trial court for ninety (90) days from September 29, 1969, and until the petition to the Supreme Court of the United States for a review by that court of the judgment of this court is finally disposed of. Provided that promptly upon the filing of such an application in the Supreme Court of the United States, counsel for the applicant shall notify the clerk of this court thereof in writing or, if no such application be filed in that court within the said 90-day period or within an authorized extension thereof, counsel for applicant shall in writing, promptly notify the clerk of this court thereof and in writing consent that the stay of the remittitur be released.

"This 2 DAY OF October , 1969.

"s/ BOND ALMAND
Chief Justice"

OPINIONS BELOW

The opinions and judgment of the Supreme Court of Georgia have not been reported, but are appended hereto. Likewise, the opinion and judgment in *Wallace v. Wallace*, 225 Ga. 102 (... S.E. 2d ...), should be referred to in any decision on the merits. In addition for further clarification, the order appealed from in the court below is also appended.

JURISDICTION

The judgment of the Supreme Court and the motion for rehearing thereof were denied as shown above. The statutory provision which is believed and contended to confer jurisdiction on this Court to review the judgment by certiorari is U.S.C. 1257(3), since a right, privilege and immunity is specially claimed under the Constitution of the United States.

QUESTIONS PRESENTED FOR REVIEW

The questions presented are:

1. WHETHER OR NOT AN ATTORNEY AT LAW, WHO IS A CITIZEN OF THE UNITED STATES AND A CITIZEN OF THE STATE OF GEORGIA, AND WHO IS DULY ADMITTED TO THE PRACTICE OF LAW IN THE STATE OF GEORGIA, MAY BE CONSTITUTIONALLY RESTRICTED AS TO SUCH PRACTICE BY RULES OF A CORPORATE ENTITY, AUTHORIZED BY LEGISLATIVE ACT AND CREATED BY THE SUPREME COURT OF GEORGIA IN VIEW OF LACK OF AUTHORITY, SAID ENTITY AS HEREAFTER SPECIFICALLY POINTED OUT?

2. WHETHER THE ACT OF THE GENERAL ASSEMBLY OF GEORGIA (GA. L. 1963, PP. 70-72) PURPORTEDLY AUTHORIZING THE SUPREME COURT OF GEORGIA TO GRANT A CHARTER TO AND CREATE SAID ENTITY (STATE BAR OF GEORGIA) IS VIOLATIVE OF THE CONSTITUTIONS OF THE STATE OF GEORGIA AND OF THE UNITED STATES OF AMERICA?

3. WHETHER OR NOT, IRRESPECTIVE OF SAID ACT OF THE GENERAL ASSEMBLY (GA. L. 1963, PP. 70-72) THE SUPREME COURT OF GEORGIA IS AUTHORIZED

TO CREATE SUCH ENTITY (STATE BAR OF GEORGIA) UNDER CLAIMED OR SUPPOSED "INHERENT POWER" HELD BY THE SUPREME COURT OF GEORGIA?

4. WHETHER SUCH ATTORNEY MAY BE CONSTITUTIONALLY DEPRIVED OF RIGHTS GUARANTEED TO HIM BY THE FIRST, FIFTH, AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA BY AND THROUGH PURPORTED RULES AND ORDERS PROMULGATED BY SAID ENTITY, TO-WIT: STATE BAR OF GEORGIA?

5. WHETHER OR NOT SUCH ATTORNEY MAY BE REQUIRED BY AND THROUGH ORDERS AND RULES PROMULGATED BY SAID ENTITY, TO-WIT: STATE BAR OF GEORGIA, TO PAY AN ANNUAL LICENSE FEE FOR THE PRIVILEGE OF PRACTICING LAW?

6. WHETHER OR NOT SAID ENTITY, STATE BAR OF GEORGIA, MAY CONTROL THE PRACTICE OF LAW IN GEORGIA BY TAKING COMPLETE CHARGE OF SAID PRACTICE OF LAW AND BY ISSUING ORDERS OF REPRIMAND, SUSPENSION, DISCIPLINE, AND DISBARMENT?

7. WHETHER OR NOT THE GEORGIA LAW OF 1963, PP. 70-72, PURPORTING TO AUTHORIZE CREATION OF SAID ENTITY, TO-WIT: STATE BAR OF GEORGIA, IS INVALID AND VIOLATIVE OF THE CONSTITUTIONS OF GEORGIA AND OF THE UNITED STATES, PARTICULARLY IN THAT SAME IS IN DEROGATION OF AND BEYOND THE AUTHORITY OF THE LEGISLATIVE BRANCH TO ADOPT AND BEYOND THE JUDICIAL BRANCH TO CREATE, ADMINISTER, ESTABLISH AND CONTROL, UNDER THE AFORESAID LAW AND UNDER ANY CLAIMED OR SUPPOSED INHERENT POWER OF THE SUPREME COURT OF GEORGIA?

8. WHETHER OR NOT THE STATE BAR OF GEORGIA MAY CONTROL THE LAWYERS AND THE PRACTICE OF LAW IN GEORGIA IN VIEW OF THE FACT THAT THE SOVEREIGN PEOPLE OF THE STATE OF GEORGIA HAVE, BY CONSTITUTION, ESTABLISHED AND PROVIDED THEREIN FOR THE SEPARATION OF POWERS BY AND BETWEEN THE EXECUTIVE, LEGISLATIVE AND JUDICIAL BRANCHES; AND FURTHER, SAID SOVEREIGN PEOPLE HAVE CREATED, BY CONSTITUTION, A SUPREME COURT OF GEORGIA WITH EXTREMELY LIMITED JURISDICTION, AND CLEARLY NEVER INTENDED SAID SUPREME COURT OF GEORGIA TO TAKE UNTO ITSELF SUCH POWER?

9. WHETHER OR NOT THE STATE BAR OF GEORGIA MAY CONTROL THE LAWYERS AND THE PRACTICE OF LAW IN GEORGIA IN VIEW OF THE FACT THAT THE SOVEREIGN PEOPLE OF THE STATE OF GEORGIA, BY CONSTITUTION, SPECIFICALLY LIMITED THE LEGISLATIVE BRANCH AS TO THE METHOD OF ADOPTING LEGISLATION WHEREBY THE AFORESAID LEGAL ENTITY, STATE BAR OF GEORGIA, IS NULL AND VOID AS A LEGAL ENTITY, AND TOTALLY WITHOUT AUTHORITY OF ANY VALID WRITTEN LAW, AND IS COMPLETELY WITHOUT INHERENT POWER TO CREATE SAID ENTITY AS IT HAS SOUGHT TO DO IN THIS INSTANCE?

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment of the Constitution of the United States provides:

No law shall be made "abridging the freedom of speech, or of the press; or the right of the people peaceably to

assemble, and to petition *the Government* for a redress of grievances." (Italics mine.)

The Fifth Amendment of our Constitution provides:

No person shall be "deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Fourteenth Amendment of said Constitution provides:

No State shall "abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The petitioner was admitted to practice law in Georgia in accordance with the statutes made and provided for that purpose, and has done so for a number of years. In 1963, the Supreme Court created an entity, an incorporated bar, sometimes called the integrated bar, called the State Bar for the purpose of requiring all lawyers duly licensed in said State to be members of said State Bar, pay an annual license fee to it, and to be subject to the rules of said organization made and provided by the Supreme Court under and "pursuant to the Act of the General Assembly approved by the Governor on March 11, 1963 (Ga. L. 1963, p. 70)," the same being adopted by the General Assembly purportedly authorizing the Supreme Court of Georgia to do so. The order of the Supreme Court of Georgia, as stated to be pursuant thereto, and the rules made and provided being found in 219 Ga. Reports 875,

917; and amendments thereafter in 221 Ga. 885, 886; and again in 224 Ga. 879, 888, provided for complete control of lawyers and the practice of law in all courts of the State, including the right of suspension, reprimand, discipline and disbarment and payment of annual license tax. Under the equity powers of the courts, the petitioner brought an action to prevent his trial under alleged power of a tribunal of three lawyers in the circuit in which he resides, appointed by such State Bar, and prayed that the courts declare the law unconstitutional under named and stated clauses of the State and Federal Constitutions, and prays that the State Bar cease and desist this illegal practice. In the meantime, by a 4-3 decision, the Supreme Court declared it had inherent power to create the State Bar and make the rules as found in the decision of *Wallace v. Wallace*, 225 Ga. 102. A writ of certiorari to this court to review the Wallace decision has been requested and is now under advisement by this Court. Thereafter, by amendment, the right and authority of the Supreme Court to create and establish the State Bar and to promulgate rules for the control of the practice of law in this State under inherent power was likewise attacked as being without authority of law and beyond the rights conferred by either the State or Federal Constitutions; and it was alleged for this reason that all proceedings thereunder were null and void; and likewise, by amendment, the appointment of a receiver was requested to take over the organization thus created. After a hearing of a motion to dismiss the trial court issued its order denying the motion to dismiss, declared the act unconstitutional, and granted a temporary injunction (see appendix for full text).

On appeal the Supreme Court held, as it had held in *Wallace*, *supra*, it had inherent power or judicial power to create the State Bar; declared part of the act void; but

reversed the court in declaring the act unconstitutional and in granting a temporary injunction, but affirmed the court in its denial of the motion to dismiss since certain alleged illegal expenditures had been claimed in the petition.

The motion for rehearing which was denied points out each and every error of the court in rendering its decision reversing the trial court.

MANNER OF RAISING FEDERAL QUESTIONS

The petition alleges the law violates the First, Fifth and Fourteenth Amendments of the Federal Constitution as well as various clauses of the State Constitution. Of necessity, the ruling of the lower court was that the act was violative of each and every constitutional attack made. The Supreme Court of Georgia reversed, and the motion for rehearing pointed out each and every misconstruction, misinterpretation and error made by such court, including its denial of rights, privileges and immunities guaranteed to the petitioner by the Federal Constitution.

SUMMARY OF REASONS FOR ALLOWANCE OF WRIT

1.

The questions involved are of gravity and importance to all members of the Bar in Georgia and every other State having similar constitutional limitations as to the power of the Supreme Court to ascertain if their status as practicing members of the legal profession can be altered by the courts of the State in the manner thus set out.

2.

The questions involved are of gravity and importance in that all members of the legal profession who have been admitted to practice in the State courts for life have a property right to carry on such profession which cannot be taken from them without affording them due process of law by proper statutory and constitutional law.

3.

The Court erred in holding Ga. Law 1963, pp. 70-72 constitutional and that it had inherent power to perform the acts here complained of, since it has no original jurisdiction, and is a court alone for the correction of errors of law only, and then only from certain named courts, as to certain matters. It is a court of extremely limited jurisdiction and power, in fact, no other State Supreme Court in the United States is more limited and restricted.

4.

The Court erred in that it compounded its original error in violating this individual's constitutional rights, guaranteed him by the First, Fifth and Fourteenth Amendments of the Constitution of the United States.

ARGUMENT OF REASONS FOR ALLOWANCE OF THE WRIT

A person admitted to practice law in the courts of a State has a property right to maintain that status until such time as it is forfeited for some valid reason. The petitioner was duly admitted to practice law for life. Every license required of him to practice has been granted and the fees paid. Only a change in the law fully authorized

by the Constitution of Georgia; or authorization by the People by and through said Constitution (for the Supreme Court to have a superintending control over the entire practice of law) could change his status as a member of the bar or as a practicing lawyer. The right to practice law has been recognized as a "property right" that can only be taken away after due process of law. In re *Ruffalo*, 390 U.S. 544 (1968).

The power and jurisdiction of the Georgia Supreme Court is extremely limited by the People in its Constitution, being a "court alone for the trial and correction of errors of law from the superior courts and the city courts of Atlanta and Savannah" and such other like courts as have been or may hereafter be established, and has "no original jurisdiction," and may review only those cases as set out in said Constitution. See Code § 2-3704 (1933 Code of Georgia). In recent years efforts have been made to increase the power and jurisdiction of the Supreme Court of Georgia by various persons but as yet no constitutional amendment has been passed for adoption by the People. The Fifth and Fourteenth Amendments extend to the protection of lawyers. *Spevack v. Klein*, 385 U.S. 511.

Only the General Assembly in the State of Georgia has the power to make laws and same must be consistent with the Constitution of Georgia and not repugnant to the Constitution of the United States. Code § 2-1920 (Georgia Code of 1933). By our Constitution the legislative power is vested exclusively in the General Assembly of Georgia. Code § 2-1301 (Georgia Code of 1933). By our Constitution the legislative, judicial and executive powers in said State shall forever remain separate and distinct, and no persons discharging the duties of one, shall at the same time exercise the functions of either of the others, except as provided in said Constitution. Code § 2-123 (Georgia Code of 1933).

After the State Supreme Court issued an order and created a legal entity—The State Bar, "pursuant to the Act of the General Assembly approved by the Governor on March 11, 1963 (Ga. L. 1963, p. 70)," petitioner brought this action in equity to declare said law unconstitutional, null and void, for the many, many reasons set out in his petition. Whereupon, before a decision in his case could be reached, the Supreme Court in *Wallace v. Wallace*, No. 25034, 225 Ga. 102 (... S.E. 2d ...), held it created the State Bar under its "judicial power" or "inherent power." This decision was a split decision (4-2, and 1 absent; 4-3 on Motion for Rehearing). In the case sub judice it refused to declare the act unconstitutional, but declared part void, and adhered to the opinion and judgment in *Wallace*, all the Justices concurring. Both of these decisions are entirely erroneous inasmuch as the court was without authority of any constitutionally conferred jurisdiction to execute the original order creating the legal entity—State Bar—through legislation (here attacked as being null, void and unconstitutional), or any inherent power of the court to control all other courts in the State, including all the members of the bar practicing before all courts. We respectfully contend the Court erred in rendering its opinion and judgment and in doing so violated—

—his freedom of speech (monies illegally collected from him are used against his will to write and speak against his interest);

—his freedom of the press (for the same reason as above);

—his freedom of association (forced to join an association against his will).

These rights are guaranteed to him by the First Amendment of the Constitution of the United States. Code § 1-801 (Ga. Code of 1933).

We also respectfully contend it likewise violated the Fifth Amendment of the Constitution of the United States in that it deprived complainant of his property without due process of law, there being no legal or constitutional authority for collecting fees from him, and in attempting to disbar, suspend and discipline him, thereby taking from him a valuable property right without any legal authority to do so. His private property (fees) have been taken from him, allegedly for public use, without just and adequate compensation therefor, there being no authority of law for so doing.

The State of Georgia, by and through the Legislative Branch, and/or The Judiciary (The Supreme Court of Georgia) through its entity thus created has abridged his privileges and immunities as a citizen of the United States, deprived him of his property without due process of law; and denied him the equal protection of the laws, there being no law to authorize any of the actions of said Supreme Court and/or its creation of a legal entity, or the said rules adopted for said creature thus illegally created. Lawyers just as other citizens enjoy first class citizenship. *Slowchower v. Bd. of Education*, 350 U.S. 551; *Garrity v. New Jersey*, 385 U.S. 493.

The incorporation or integration of the Georgia Bar was based upon a law by the General Assembly. In response to a request by the Georgia Bar Association it issued an order to said Association to prepare a charter for execution; it later verbally ordered portions of the proposed rules stricken, including the term pursuant to "inherent power." The final order stated it did so "pur-

suant to the Act of the General Assembly." Under the Georgia Constitution this was not an adjudication but an action called upon by the General Assembly. The Court now in this decision states that it did so under its "judicial power." Thus, at this late date (*Wallace v. Wallace*, 225 Ga. 102; and again in this case), the Georgia Supreme Court is holding that the power to integrate or incorporate the Bar is an incident to the exercise of its judicial power. As such, nunc pro tunc, "the action had the characteristics of legislation." *Lathrop v. Donohue*, 367 U.S. 820, at page 827. Under the authority of this case, this Court should grant the writ of certiorari.

But unlike Wisconsin, the Georgia Supreme Court *does not have* a "general superintending power over all inferior courts," and under its extremely limited power as an appellate court it was without authority to legislate into existence the entity—State Bar.

CONCLUSION

The petition for writ of certiorari should be granted, and the judgment of the Supreme Court of Georgia should be reversed for failing to protect a citizen of the United States, in denying him due process of law, depriving him of his freedom of speech, and of the press and the right of association, and the equal protection of the laws. The judgment should be reversed and remanded to the lower court granting him the following relief:

1. The order of the Supreme Court of Georgia creating the entity—State Bar—should be declared null and void and without and beyond the authority of the Constitution of Georgia and of the United States.

2. The rules adopted for the operation, organization, and control of the entity—State Bar—created by the Supreme Court of Georgia by its legislation, should be declared to be null, void and beyond the constitutional authority of the State and Federal Constitutions.

3. Georgia Laws 1963, pp. 70-72, be declared unconstitutional, null and void, for one or some, or all of the reasons declared on in petitioner's complaint in the lower court.

4. The Supreme Court of Georgia should be directed to declare Georgia Laws 1963, pp. 70-72, unconstitutional, null and void; and likewise all proceedings by it thereunder.

5. The Supreme Court of Georgia should be declared to be without "judicial" or "inherent power" to have legislated as it sought to do in this instance.

6. The temporary injunction granted in the lower court should be affirmed; and the judgment and opinion in this case in the Supreme Court of Georgia should be reversed and remanded; and

7. That court ordered to grant this petitioner such other and further relief as this court deem meet and proper.

Respectfully submitted,

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Appendix

Decided: Sep. 15, 1969

[fol. 1] Supreme Court of Georgia

25292. SAMS et al v. OLAH.

The attacks made on the validity of the Act proposing the creation of the State Bar of Georgia (Ga. L. 1963, pp. 70-72), and the rules and regulations adopted for the government of the State Bar (219 Ga. 878-917), were without merit, and the trial judge erred in declaring them unconstitutional and void, and in restraining and enjoining the disciplinary action against the appellee.

(a) The complaint stated a claim on which relief could be granted in alleging illegal expenditures of the funds obtained from license fees, and the judge properly held that the complaint was not subject to the motion to dismiss.

[fol. 2] MOBLEY, Presiding Justice. This appeal is from an order denying a motion to dismiss an equitable complaint; declaring Ga. L. 1963, pp. 70-72, to be unconstitutional, null, and void; and granting an injunction.

Stephen J. Olah, an attorney licensed to practice law in Georgia, brought an action against Disciplinary officials of the State Bar of Georgia and against the State Bar of Georgia. He alleged that they are proceeding against him without authority of law in a disciplinary matter because the law under which the State Bar of Georgia was created (Ga. L. 1963, pp. 70-72), and the rules of the

State Bar (219 Ga. pp. 878-917), violate the Constitution of Georgia and the Constitution of the United States, for stated reasons, and are contrary to certain laws of the State. He sought injunction against the prosecution of the disciplinary action against him and against other alleged illegal actions of the State Bar.

The order of the trial judge, entered after a hearing on the issues involved in the pleadings, held that (1) the complaint stated a claim for equitable relief because of the unconstitutionality of the statute, and be-
[fol. 3] cause of the alleged illegal expenditure of funds by the State Bar to foster legislation and promote ideologies, political issues, and candidates which the complainant opposes. (2) Ga. L. 1963, pp. 70-72, is unconstitutional, null, and void on a number of grounds alleged in the complaint, examples of which are stated. (3) The defendants are restrained and enjoined from proceeding with the disciplinary action against the complainant under rules and regulations adopted pursuant to the 1963 Act.

1. The complaint made numerous constitutional attacks on the Act proposing the creation of the State Bar of Georgia. (Ga. L. 1963, pp. 70-72). The trial judge's order holds that the Act is unconstitutional, null, and void "for a considerable number of grounds alleged" and only specifies a few of the grounds on which the Act is held unconstitutional. It is therefore necessary that we consider all constitutional attacks to determine if any of them are meritorious.

A number of the grounds of attack were dealt with by this court in *Wallace v. Wallace*, 225 Ga. 102
[fol. 4] (166 SE 2d 718), adversely to the contentions of the complainant (appellee) herein. These

attacks are as follows: (1) The State Bar Act violates Art. I, Sec. I, Par. XXIII of the Constitution of Georgia (*Code Ann.* § 2-123), in that it delegates legislative power to the Supreme Court of Georgia and to the Georgia Bar Association. (2) The State Bar Act delegates to the Supreme Court of Georgia the right to create the State Bar of Georgia contrary to Art. VI, Sec. II, Par. IV of the Constitution of Georgia (*Code Ann.* § 2-3704), which provides that: "The Supreme Court shall have no original jurisdiction but shall be a court alone for the trial and correction of errors of law . . ." (3) The State Bar Act is a special law respecting the Supreme Court for which provision has already been made by general law, *Code* § 24-3901, enumerating the powers of the Supreme Court, and this violates the Constitution of Georgia, Art. I, Sec. IV, Par. I (*Code Ann.* § 2-401), prohibiting the passage of a special law in any case for which provision has been made by existing general law. (4) The State Bar Act deprives the appellee and other lawyers of their right to have their rights, duties, and obligations as lawyers defined by an act of the General Assembly of
[fol. 5] Georgia, and not otherwise, contrary to Art. III, Sec. I, Par. I (*Code Ann.* § 2-1301) and Art. III, Sec. VII, Par. XX (*Code Ann.* § 2-1920) of the Constitution of Georgia. (5) The State Bar Act is unconstitutional because it creates a private corporation in violation of Art. III, Sec. VII, Par. XVII (*Code Ann.* § 2-1917) of the Georgia Constitution, which provides that the General Assembly shall have no power to grant corporate powers to private companies.

Two Justices dissented from the *Wallace* case on grounds other than the constitutional grounds, which would not be reached under their theory of the case, and one Justice did not participate because of illness. The appel-

lee has argued these grounds of constitutional attack decided in the *Wallace* case, and asks that we overrule the *Wallace* case. After careful consideration of the *Wallace* case, we adhere to the rulings made therein.

2. It was asserted by the appellee that the State Bar Act violates the Constitution of Georgia, Art. III, Sec. VII, Par. XVI (*Code Ann.* § 2-1916), which provides that no law or section of the Code shall be amended or repealed by mere reference to its title, or to the number [fol. 6] of the section of the Code, but the amending or repealing act shall distinctly describe the law to be amended or repealed, and the alteration to be made, in that the State Bar Act purports to repeal all laws and parts of laws in conflict with it, but does not describe the law or laws to be repealed, or the alterations to be made.

The Act proposing the creation of the State Bar does not purport to amend any law or section of the Code. If the Act should have the effect of repealing any law or Code Section by implication, it is a well settled principle that repeals by implication do not come within the provisions of Art. III, Sec. VII, Par. XVII of the Constitution. *Fortson v. Fortson*, 200 Ga. 116, 119 (35 SE 2d 896); *Leonard v. State*, 204 Ga. 465 (1) (50 SE 2d 212).

3. The trial court held that the State Bar Act violated the Constitution, Art. III, Sec. VII, Par. VIII (*Code Ann.* § 2-1908) in that it contained matter in the body of the Act different from that expressed in the title, in [fol. 7] allowing the administrative arm of the court (the State Bar) "to control its own rules and prevent the Supreme Court from creating rules not presented it (1) by the Georgia Bar Association; and (2) thereafter, the State Bar . . ."

The title of the Act gives notice that the Act is "to authorize the Supreme Court of Georgia to establish, as an administrative arm of the Court, a unified, self-governing bar . . ." and "to provide for the adoption of rules and regulations by the Supreme Court for the organization and government of the unified bar . . ." Further, it gives notice that the Act is "to provide the method of making application to the Supreme Court for the establishment of the 'State Bar of Georgia' and the method of establishing and amending rules and regulations governing the same; . . ."

The title of the Act stating that it provides a method of making application to the Supreme Court for establishment of the State Bar gives notice that application for creation of the State Bar may be made by some group, and that the Act will set out the conditions of the application. The statement in the caption that the [fol. 8] Act will provide "the method of establishing and amending rules and regulations governing the same," would be notice that the Act could contain the provision (in § 5) that the "rules and regulations may be amended only upon recommendations of the 'State Bar of Georgia' under such rules and proceedings as shall be prescribed by the Court."

The Act is not subject to the attack that it violates the constitutional prohibition against an act containing matter different from that expressed in the title. See *Sheppard v. DeKalb County Board of Education*, 220 Ga. 219, 220 (1) (138 SE 2d 271); *Nash v. National Preferred Life Ins. Co.*, 222 Ga. 14 (1) (148 SE 2d 402).

4. While the appellee argues strongly that the Act proposing the creation of the State Bar was an improper delegation of a legislative function to the Supreme Court,

he further contends that the Act improperly restricts the power given the court by providing that it might create a unified bar only on petition by the Georgia Bar Association, could initially adopt only those rules and regulations for the government of the unified bar which had [fol. 9] been approved by the Georgia Bar Association, and upon the establishment of the State Bar could amend the rules and regulations only upon recommendations of the State Bar.

In *Wallace v. Wallace*, 225 Ga. 102, supra, it was held that the creation of a unified state bar is a judicial function. In proposing that the Supreme Court create a unified bar, the General Assembly did not have the authority to circumscribe the court by denying it the right to adopt rules and regulations on its own initiative. Since the court had the power to create the State Bar, it must necessarily also have the power to make rules for the government of this administrative arm of the court.

In *Georgia Bar Assn. v. Lawyers Title Ins. Corp.*, 222 Ga. 657, 659 (151 SE 2d 718), this court stated that it concurred in the view expressed in cases from other jurisdictions that the judiciary could not be circumscribed or restricted in the performance of its duties related to its inherent power to regulate the practice of law. It is the duty of this court to reject legislative attempts to interfere with the exercise of its judicial powers. [fol. 10] The provisions in the State Bar Act attempting to limit this court in the exercise of its judicial function in creating the State Bar, and adopting and amending rules and regulations for its government, are void.

Where some portion of a legislative act is unconstitutional and void, the whole legislative scheme is not rejected if the improper matter is not such an essential and

inseparable part of the general legislative purpose that the entire Act must fall with it. *Leonard v. American Life & Annuity Co.*, 139 Ga. 274 (77 SE 41). These void provisions in the State Bar Act, attempting to limit this court in the exercise of its judicial functions, are not such an essential and inseparable part of the general legislative purpose as to render the whole Act unconstitutional.

5. The trial court held that the provision of the Act authorizing the assessment of a "reasonable license fee" against members of the State Bar is unconstitutional because it is either a tax or a gratuity, and violates the Constitution of Georgia, Art. VII, Sec. I, Pars. [fol. 11] I and II (*Code Ann.* §§ 2-5401 and 2-5402); and Art. VII, Sec. II, Pars. I and III (*Code Ann.* §§ 2-5501 and 2-5503).

The Constitution, Art. VII, Sec. II, Par. III (*Code Ann.* § 2-5503) requires that: "All money collected from taxes, fees and assessments for State purposes, as authorized by revenue measures enacted by the General Assembly, shall be paid into the General Fund of the State Treasury . . ." Clearly the purport of the State Bar Act is to authorize the establishment of a regulatory body to regulate the practice of law, and the fee is plainly authorized for the purpose of defraying the expenses of operating the State Bar. It is not a fee authorized by a revenue measure, nor is it a gratuity.

This court in *Brown v. City of Atlanta*, 221 Ga. 121, 124 (143 SE 2d 388), held: "The license fee required under the rules and regulations of the State Bar of Georgia is not a professional tax on attorneys levied by the State of Georgia in lieu of the professional tax levied by the Act of 1935 (Ga. L. 1935, p. 13). This license fee is paid to

the State Bar of Georgia, and the funds received
[fol. 12] are dispersed under the direction of the Board of Governors of the State Bar of Georgia. No part of these funds is ever paid into the treasury of the State of Georgia. A municipality is not precluded from levying a tax on attorneys because of the license fee paid to the State Bar of Georgia."

The trial court erred in holding that the fee is a tax or gratuity, and unconstitutional because violating the constitutional provisions recited.

6. The appellee contended in his complaint that the State Bar Act violates the impartial protection and due process clauses of the Georgia Constitution (Art. I, Sec. I, Pars. II and III; *Code Ann.* §§ 2-102 and 2-103), and the clause providing that it is the duty of the Legislature to enact laws to protect citizens in the full enjoyment of their rights, privileges and immunities (Art. I, Sec. I, Par. XXV; *Code Ann.* § 2-125), because the Act defines the rights, duties, and obligations of lawyers, including the payment of a license fee, without specific enactment thereof by the General Assembly. It is further
[fol. 13] asserted that the Act violates the Georgia Constitution, Art. I, Sec. I, Par. IV (*Code Ann.* § 2-104), providing that no person shall be deprived of his right to defend his cause in any of the courts of this State, and Art. I, Sec. I, Par. V (*Code Ann.* § 2-105), guaranteeing rights in regard to trial, because lawyers are denied their right to have an accusation based on an affirmative statute of the State.

These attacks present essentially the same questions as those ruled on in *Wallace v. Wallace*, 225 Ga. 102, 112, supra, wherein it was held: "This holding also controls adversely to appellant as to his attacks asserting

that the Act deprives him and others of full enjoyment of their rights, privileges and immunities as lawyers and deprives him of the right to have his rights, duties and obligations defined by the General Assembly. As discussed above, regulation of the practice of law is the function of the judiciary."

Accordingly, these constitutional attacks are without merit.

[fol. 14] 7. It was asserted by the appellee that the State Bar Act violates the First, Fifth, and Fourteenth Amendments of the United States Constitution (*Code* §§ 1-801, 1-805 and 1-814), and the due process and freedom of speech clauses of the Georgia Constitution (Art. I, Sec. I, Pars. III and XV; *Code Ann.* §§ 2-103 and 2-115), because it requires him to pay a fee against his will when he is already fully authorized under the law to practice his profession; because it deprives him of freedom of contract, conscience, speech, and liberty, and deprives him of property without due process of law; because the Act and the rules of the State Bar were entered into without his control or consent and he will be deprived of his right to earn a living unless he obeys the rules and pays the dues required and remains a member of the organization; and because the State Bar takes his fee and spends it for the purposes it sees fit to promote ideologies, engage in political activities, and seek the passage of legislation, against his wishes, requiring his unwilling membership in a political organization.

[fol. 15] The lawyer stands in a unique position in our society. He is by virtue of the practice of his profession an officer of the court. *Platen v. Byck*, 50 Ga. 245, 248; *Bibb County v. Hancock*, 211 Ga. 429, 438 (86 SE 2d 511). In *Gordon v. Clinkscales*, 215

Ga. 843, 845, 846 (114 SE 2d 15), this court quoted with approval from 7 CJS 708, Attorney and Client, § 4 b, as follows: "The right to practice law is not a natural or constitutional right, nor an absolute right or a right de jure, but is a privilege or franchise." It also quoted with approval from 7 CJS 706, Attorney and Client, § 4 a, as follows: "An attorney does not hold an office or public trust, in the constitutional or statutory sense of that term, but is an officer of the court. He is, however, in a sense an officer of the state, with an obligation to the courts and to the public no less significant than his obligation to his clients. The office of attorney is indispensable to the administration of justice and is intimate and peculiar in its relation to, and vital to the well-being of, the court."

Because of the vital role of the legal profession in the administration of justice, it was a proper exer-
[fol. 16] cise of State power, proposed by the legislative department, and activated by the judiciary, to create a State Bar for the purpose of "maintaining high standards of conduct in the legal profession and . . . aiding in the efficient administration of justice." Ga. L. 1963, pp. 70, 71, § 2. It has never been the law of this State that a lawyer holds an irrevocable license to practice law. There is no merit in the appellee's contention that he is denied his constitutional rights by the State Bar Act because it requires him to pay a fee when he is fully authorized to practice his profession, or because he will be deprived of his right to earn a living unless he obeys the rules and remains a member of the State Bar.

The State Bar Act does not deprive the appellee of his freedom of contract, conscience, speech, and liberty, nor deprive him of his property without due process of law. It is true that he is required to contribute to the

cost of the operation of the State Bar, and he may not agree with all of the policies as determined by its Board of Governors. The Board of Governors is selected in a democratic manner. It is frequently true in a [fol. 17] democratic society that the wishes of the minority are overruled, even though they must contribute to the cost of the programs carried forward by the majority. The individual lawyer in Georgia is left entirely free in his contracts with his clients, and he has complete freedom of conscience in the causes which he espouses. The only area in which he may be restrained by the State Bar is in his professional conduct, and this is a legitimate exercise of restraint over the freedom of the individual.

The State Bar Act does not authorize the organization to engage in political activities. Section 2 of the Act authorizes the Supreme Court to adopt rules and regulations and to "define the rights, duties and obligations of the members therein including the payment of a reasonable license fee and otherwise regulate and govern the practice of law in this State, to the end that such unified State Bar shall promote the best interest of the public by maintaining high standards of conduct in the legal profession and by aiding in the efficient administration of justice." The Act does not authorize the li- [fol. 18] cense fees to be used for any activity except those in harmony with the stated purposes of the Act.

The State Bar Act, and the rules and regulations adopted to govern the State Bar, are not subject to the constitutional attacks stated in this division.

8. The appellee contended that the State Bar Act, and the rules and regulations of the State Bar, are contrary

to the Act which is sometimes called the "Right to Work" Act. Ga. L. 1947, pp. 616-621 (*Code Ann.* §§ 54-801—54-909). This latter Act deals with relationships between "employers," "employees," and "labor organizations." The State Bar of Georgia is not a labor organization, the lawyer is not an employee, nor is the client an employer, within the meaning of the Act. "The engagement of counsel does not create the relation of master and servant . . . The employment carries with it duties and obligations apart from serving the client. He represents the client . . . The attorney not only serves his client, but the court also, and through the court he serves in a measure the public." *Claxton v. Johnson County*, [fol. 19] 194 Ga. 43, 48, 49 (20 SE 2d 606).

The purposes of the State Bar are: "(a) To foster among the members of the Bar of this State the principles of duty and service to the public; (b) To improve the administration of justice; and (c) To advance the science of law." Rule 1-103, 219 Ga. 879.

There is no merit in the contention that the State Bar Act violates the "Right to Work" law.

9. The appellee alleged that the State Bar Act does not authorize disciplinary proceedings, and that rules 4-101 through 4-218 (219 Ga. 878, 901-914) were adopted by this court without authority of law. The Act provides in § 2 for the adoption of rules and regulations "for the organization and government of the unified State Bar and to define the rights, duties and obligations of the members therein . . . and otherwise regulate and govern the practice of law in this State, to the end that such unified State Bar shall promote the best interest of the public by maintaining high standards of conduct in the legal profession and by aiding in the efficient administration of justice."

Section 3 provides that "before a final order of
[fol. 20] any nature or any judgment of disbarment is entered, the lawyer involved may elect to have any material issues of fact determined by a jury in the superior court of the county of his residence."

There is no merit in the contention that the Act does not authorize the adoption of disciplinary rules and regulations.

10. The purpose of the State Bar Act was to initiate the creation of the State Bar of Georgia. It eliminated any conflicting claims of coordinate branches of government to such power. Its adoption encouraged the court to exercise its inherent power in this regard. In response thereto, but in the exercise of an inherent judicial function, the Supreme Court acted and the State Bar of Georgia was created. Although the Act was not essential for such action, it is a valid legislative enactment and not subject to the constitutional and other attacks made. The trial judge erred in holding the Act void, and the rules and regulations a nullity, and in restraining and enjoining the defendants from proceeding with the disciplinary action against the appellee.

11. We now consider the ruling by the trial judge that the complaint stated a claim for equitable relief, which will require a trial of the issues, because of
[fol. 21] the "alleged illegal expenditure of funds collected from him and others similarly situated."

The appellee alleged that the State Bar is spending the dues collected from him and other lawyers "in illegal manners and against the wishes" of the appellee and others similarly situated, in specified ways. These allegations do not involve any question of the validity of the State Bar

Act, but make the separate issue of an alleged illegal expenditure of funds by the State Bar.

The lawyer is required to pay an annual license fee to the State Bar in order to practice his profession. Should the State Bar spend the funds derived from license fees on activities not in harmony with the purposes of the State Bar, this would deprive the lawyer of his property without due process of law.

Some of the allegations of illegal expenditures are obviously without merit. For example, the appellee complained that the State Bar illegally used its funds by "hiring and paying a lawyer to draw charges against this [fol. 22] petitioner with funds collected from this petitioner, which is against his desires and wishes." The test is not whether the funds are being spent contrary to the wishes of the lawyer, but whether the expenditures are for purposes for which the State Bar was created. The maintenance of high standards of professional conduct by members of the bar is one of the most important functions of the State Bar, and the dues of its members can certainly be legally used for this purpose, whether or not it is the wish of an individual member that his professional conduct be investigated. In *International Assn. of Machinists v. Street*, 217 Ga. 351 (122 SE 2d 220), this court held that a labor union might be enjoined from using its funds for political purposes against the wish of an individual member, but this ruling was based on the fact that this was a use of funds for purposes other than collective bargaining, the legitimate purpose of the union, and not merely that it was against the wish of the member.

The trial judge based his ruling that the complaint stated a claim as to alleged illegal expenditures on the alleged use of funds "to foster legislation and promote

[fol. 23] ideologies and political issues and candidates he opposes in violation of named clauses and sections of the State and Federal Constitutions. The promotion of political issues and candidates is not within the purpose of the State Bar as expressed in the Act and the rules and regulations. The fostering of legislation and the promotion of ideologies may, or may not, be consonant with the purposes of the State Bar, according to the nature of the legislation and the ideologies.

The State Bar of Georgia is a legal entity, which may sue or be sued. Rule 1-102, 219 Ga. 878. A court of equity has jurisdiction to grant an injunction to a member of the State Bar denied a constitutional right by it. *Clary v. Mathews*, 224 Ga. 82 (160 SE 2d 338). A motion to dismiss for failure to state a claim "should not be granted unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim." *Bourn v. Herring*, 225 Ga. 67 (3) (166 SE 2d 89).

We affirm the ruling of the trial judge that the com-
plaint stated a claim on which relief could be
[fol. 24] granted, because of the alleged illegal expendi-
ture of funds, and the appellee is entitled to support this contention with evidence.

Judgment affirmed in part; and reversed in part. All the Justices concur. Felton, J., concurs specially.

[fol. 1] FELTON, Justice, concurring specially.

1. It has been impossible for me to give as full consideration to this case as I do in ordinary circumstances. I have done the best I could under the existing situation. I first concurred in the opinion and judgment. On motion for rehearing in the limited time that I have, I wish to change my concurrence to a special one because at this moment I cannot agree with all that is said in the opinion and think that possibly more should have been said on some of the questions ruled on.

I belatedly discovered that the trial judge in his judgment stated: "Whether or not he may be disciplined, suspended, or disbarred . . . by some rule authorized by the Supreme Court under its inherent power as stated in Wallace v. Wallace, 224 Ga.255 (161 SE 2d 288)
[fol. 2] . . . is not here decided or passed on." It is contended by appellee that this court has no jurisdiction to pass on a question not ruled on by the trial court. I also think that the contention is without merit for the reason that the trial court could not escape the fact that he was bound by the decision in the *Wallace* case by refusing to pass on the question of this court's inherent power, and for the reason that the legal consequence of the trial court's judgment is that this court does *not* have the prerequisite inherent power, because if this is not true he could not issue a legal and binding injunction, which necessarily meant that this court does not have that power. In this case, this court does have jurisdiction to do what it has done under the peculiar circumstances existing.

2. Even if this court stated that it was acting under legislative authority claimed to be unconstitutional, where two decisions of this court hold that this court has inherent

[fol. 3] power to do the acts complained of, the authority of this court to so act renders moot the constitutionality of the legislative action purportedly acted on. This court has never said that it did not act on the basis of inherent power and if it could, and did, what it did is binding. Inherent power is the life of this issue and nothing that has happened has snuffed out that life and, indeed, nothing can except a new constitution. That also disposes of the provision in the act or rules which provides that no change in the rules, or addition of new ones could be effected unless the State Bar instituted the action. This court had the inherent power to make such a rule, no matter how unwise some might think it to be. The court, in this field of operation, could experiment with such a rule. It *could* work, but even if experience shows it to be wrong or unwise, the court can always change a rule if it is shown to be unwise or likely to do some harm to any person. My point is that it is not unconstitutional.

Georgia Supreme Court Judgment

[fol. 1] SUPREME COURT OF GEORGIA

Atlanta, September 15, 1969

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

Garvis L. Sams et al v. Stephen J. Olah.

This case came before this court upon an appeal from the Superior Court of Cobb County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed in part, and reversed in part for the reasons stated in the opinion this day filed. All the justices concurs. Felton, J., concurs specially.

BILL OF COSTS, $30.00

IN THE SUPERIOR COURT FOR THE COUNTY OF COBB

STATE OF GEORGIA

[fol. 1]

STEPHEN J. OLAH,
Plaintiff

v.

GARVIS L. SAMS, et al,
Defendants

CIVIL ACTION No. 26475

ORDER

(Filed April 8, 1969)

The above and foregoing matter coming on to be heard before me after a hearing on the law, and counsel for both parties having been heard, the Court finds and holds as follows:

1. The motion to dismiss is hereby denied. The Petition, as amended, states a claim for equitable relief because of the unconstitutionality of a statute, as well as to seek a declaration of plaintiff's rights, and to restrain and enjoin the alleged illegal expenditure of funds collected from him and others similar situated in order to foster legislation and promote ideologies and political issues and candidates he opposes in violation of named clauses and sections of the State and Federal Constitutions as set out in the petition, as amended. See Looper v. Ga. So. &c. Railway Co., 213 Ga. 279; International &c. of Machinists v. Street, 215 Ga. 27; 217 Ga. 351; and 367 U.S. 740. Questions of fact are involved requiring a trial of the issues, and a simple law question will not settle them.

2. Without a doubt, Georgia Laws 1963, pp. 70, 72, is unconstitutional, null and void for a considerable number of grounds alleged in the amended petition, and is hereby declared to be a nullity. For example it:

(a) Clearly contains matter in the body of the act different from what is expressed in the title (Sections 4 and 5 thereof), amounting to covert, surprise, and clandestine legislation in seeking to tie the hands of the Supreme Court and all future members thereof in allowing the administrative arm of the court thus created to control
[fol. 2] its own rules and prevent the Supreme Court from creating rules not presented it (1) by the Georgia Bar Association; and (2) thereafter, the State Bar in violation of Art. 3, Sec. 7., Par. 8, Constitution of 1945 (Code Ann.S. 2-1908).

See: Prothro v. Orr, 12 Ga. 36, 42;
Crabb v. State, 88 Ga. 584;
Harris v. State, 110 Ga. 887;
Conley v. State, 85 Ga. 365;
McDuffie v. State, 87 Ga. 687;
Elliott v. State, 91 Ga. 687;
Dempsey v. State, 94 Ga. 766, 768;
Sasser v. State, 99 Ga. 54
Arrington v. State, 148 Ga. 115
Bray v. City of East Point, 203 Ga. 315, 317;
Griffin v. Merritt, et al, 223 Ga. 562, 658 (1)

(b) Seeks to 'aid' the Supreme Court by authorizing it to exercise legislative power over lawyers and the law practice and to a private organization created by a branch of the Georgia Judiciary in violation of the separation of powers doctrine (Art. 1, Sec. 1, Par. 23, Constitution; Code Ann. S. 2-123;) delegates its legislative power (Art. 3, Sec. 1, Par. 1, Code Ann.S. 2-1201; and Art. 3, Sec.

7, Par. 30, Code Anno. S. 2-1920); and likewise seemingly authorizes and directs the Supreme Court, by and through its administrative arm thus created, the right of taxation solely within the legislative authority in derogation of the Constitution. (Art. 7, Sec. 1, Par. 1; Code Ann. S. 2-5401 and 2-5402; Art. 7, Sec. 2, Par. 1; Code Ann. S. 2-5501; and Art. 7, Sec. 2, Par. 3; Code Ann. S. 2-5503). The Legislature cannot delegate Judicial Power. If this be judicial power delegated then it is automatically void as an attempt to delegate same to a separate branch of government, and if it be legislative power it is void for the reasons stated above. If it is not a tax it is a gratuity, and whether "money collected from taxes, fees and assessments for State purposes" it must be paid into the General Fund and appropriated therefrom "as required by this Constitution." Thus it matters not whether it is called a tax, a fee, or assessment, it is beyond the pale of the Constitution of 1945. Lawyers, just as farmers, and others, must remain within the law and the Constitution. See Williams v. Ivey, 177 Ga. 77; Agricultural Commodities Authority v. Balkcom, 215 Ga. 107; Campbell v. Farmer, 223 Ga. 605.

[fol. 3] 3. The defendants are therefore enjoined and restrained from proceeding to harass, suspend, disbar or discipline plaintiff under any rule or regulation adopted pursuant to Georgia Laws 1963, pp. 70, 72, which is an absolute nullity. Any and all rules adopted pursuant thereto are likewise a nullity. Whether or not he may be disciplined, suspended or disbarred by reason of an offense charged under Georgia Code Ch. 9-5; or an offense occurring in open court of the Superior Court under its inherent power, or by some rule authorized by the Supreme Court under its inherent power as stated in

Wallace v. Wallace, No. 24480, 224 Ga. p. 255, (an opinion rendered by a majority of 4 Justices, 2 Dissenting, Chief Justice absent; Motion for rehearing denied, 4-3) is not here decided or passed on.

This 8th day of April, 1969.

/s/ L. C. Hames, Jr.
L. C. HAMES, JR., JUDGE,
COBB SUPERIOR COURT